

JUL 31 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

JOSUE MISAEL DE LEON,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 05-72313

Agency No. A96-154-264

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Josue Misael De Leon, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' order dismissing his appeal from an

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

immigration judge's ("IJ") order denying his application for cancellation of removal. We dismiss the petition for review.

De Leon's contention that the IJ's finding regarding continuous physical presence improperly influenced her finding regarding hardship is not supported by the record and does amount to a colorable due process claim.¹ *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 930 (9th Cir. 2005).

PETITION FOR REVIEW DISMISSED.

¹ Because De Leon's failure to demonstrate the requisite hardship is dispositive, we do not consider whether he established ten years of continuous physical presence. *See* 8 U.S.C. § 1229b(b)(1); *Romero-Torres Ashcroft*, 327 F.3d 887, 889 (9th Cir. 2003).